

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

ANNE CORI, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 2016-MR-000111
)	
EDWARD R. MARTIN, JR., et)	
al.,)	
)	
Defendants.)	

REPORT OF PROCEEDINGS

REPORT OF PROCEEDINGS of the hearing before
Circuit Judge Dennis Ruth, commencing on January 27,
2017.

APPEARANCES:

MR. ERIK O. SOLVERUD and
MR. ARTHUR D. GREGG and
MR. ERIC BLOCK
SPENCER FANE
Appears on behalf of the Individual Plaintiffs

MR. JAMES P. SANDERS and
MS. JESSICA POWERS
SMITH AMUNDSEN
Appears on behalf of Eagle Forum

MR. BARRY S. NOELTNER and
MS. ALISHA L. BIESINGER
HEYL ROYSTER

Appears on behalf of the Defendants

MS. JESSICA BRASEL
KNAPP, OHL & GREEN

Appears on behalf of Anne Cori, Counterclaim
Defendant

MR. JASON GOURLEY
DONOVAN, ROSE & NESTER

Appears on behalf of Cathie Adams, Counterclaim
Defendant

Kerri A. Smith
CSR #084-003937
Official Court Reporter
155 N. Main, Rm. 344
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1 as nominal defendant. And they were adverse -- it was
2 an adverse position to plaintiffs. There's no
3 question about that.

4 THE COURT: Who owns the privilege?

5 MR. NOELTNER: What's that?

6 THE COURT: Who owns the attorney client
7 privilege?

8 MR. NOELTNER: That privilege would be
9 owned by -- in this case when you have adverse action,
10 that would be owned by the organization as it
11 consisted at that time and control group, those people
12 who were feeding the information to those lawyers in
13 order to contest the plaintiffs' attempt to take over
14 of the organization.

15 This is not a situation where they're suing
16 an outside party and there's a change in ownership or
17 change in the board where that work product then
18 becomes the work product of the organization. These
19 are clearly adverse parties at the time.

20 Okay. So all we're asking, Judge, is that
21 there be no disclosure of that information; that we
22 wait for -- that's why it's an emergency hearing. We
23 wanted to come in and make sure there was no
24 disclosure. We can try to determine how we're going

1 to go about determining what's attorney client, what's
2 joint defense agreement, what's work product. Because
3 clearly there are things in all of our files that
4 could be disclosed and others that are in files. And
5 there are a number of the sections of the code of
6 professional conduct that apply to this.

7 It's a very simple, logical argument. They
8 can't take the information they gain, which is adverse
9 to the plaintiffs, and now use it against those same
10 parties. Simply cannot. And there's no authority
11 that allows --

12 THE COURT: You mean adverse to the
13 defendants?

14 MR. NOELTNER: Yeah. Right. In fact,
15 they're filing motions against the same people. So,
16 Judge, we would ask, again, nothing prospective, just
17 a stop. You can't disclose it. We need to take a
18 further look at it, because they may have made the
19 disclosures. They may not. We're entitled to know.
20 Thank you.

21 MR. SANDERS: James Sanders, Your Honor,
22 for Eagle Forum. I don't think it's as simple as
23 Mr. Noeltner would portray. I think the fact that you
24 were working on it last night until 11 is instructive

1 documents. And it was then brought to my attention
2 that the decision was made that the disclosure would
3 occur.

4 That's the basis of the timing of this
5 motion. And it is, in fact, an emergency, because if
6 it's not stopped, then it's, you know, the proverbial
7 un-ringing of a bell.

8 MR. SANDERS: Your Honor, we've been
9 bombarded, our general counsel's office and one of the
10 founders of the firm, Glen Amundsen, by individuals
11 such that we had to block Mr. Martin from
12 communicating directly with Smith Amundsen's law
13 firm -- the law firm and our general counsel's office.

14 We, again, disclosed -- we disclosed to the
15 board that this information was out there in December.
16 At that point anyone, including Rummymede, Mr. Martin,
17 Mr. Schlafly, presumably someone could file another
18 lawsuit, could have taken action on this. And they
19 waited until yesterday afternoon.

20 THE COURT: Well, generally as it relates
21 to any privilege, as I just said, I believe that
22 privilege belongs to Eagle Forum, not to the employees
23 of Eagle Forum. Any specific issues -- evidentiary
24 issues that come up during this hearing that you want

1 to raise, I'll address. I don't even know if they're
2 going to be bringing any of these up, because we're
3 here really on your motion to stop a meeting tomorrow.
4 May not be titled that way, but that's the relief
5 that's asked for.

6 MR. SANDERS: One more point, Your Honor.
7 If we'd be allowed seven days leave to file a written
8 response to Mr. Noeltner.

9 THE COURT: On that underlying issue?

10 MR. SANDERS: On that underlying issue.

11 THE COURT: Yeah.

12 MR. SANDERS: Thank you, Your Honor.

13 MR. NOELTNER: And, Judge, I would --

14 THE COURT: Preliminary issue, not the
15 underlying issue.

16 MR. SANDERS: Fair enough.

17 MR. NOELTNER: I would only ask that in
18 light of the seven days to respond there be no
19 disclosure beyond what's already been done during
20 those seven days. Is that fair enough?

21 MR. SANDERS: We have no intent to disclose
22 it to anyone other than the people who should
23 rightfully have it, the board of directors.

24 THE COURT: Are you asking me to tell them

1 not at tomorrow's meeting to divulge information?

2 MR. NOELTNER: That's --

3 MR. SANDERS: We certainly can talk to the
4 board.

5 THE COURT: I thought the motion went
6 toward today's hearing?

7 MR. SANDERS: Absolutely.

8 MR. NOELTNER: Our motion concerns --

9 THE COURT: Your motion is to stop
10 tomorrow's meeting.

11 MR. NOELTNER: Well, that's the other
12 motion. Yes, it is.

13 MR. SANDERS: To stop --

14 THE COURT: Are you telling me that you're
15 asking me to stop them from divulging outside of the
16 litigation? I'm not gonna do that.

17 MR. NOELTNER: Within litigation. Yes.

18 THE COURT: What's that?

19 MR. NOELTNER: Your Honor, within the
20 litigation to disclose it to people that are not part
21 of that group. They're not entitled.

22 MR. SANDERS: Your Honor --

23 THE COURT: Well, that's denied.

24 MR. SANDERS: Judge, you ready for the

1 asked for in the end is for me to stop a meeting
2 tomorrow and for them to take action tomorrow. That's
3 an injunction.

4 MR. NOELTNER: It's compliance with the
5 previous TRO.

6 THE COURT: Well, if they don't comply,
7 then the other option is for me to say fine, come back
8 after they don't comply. You're either asking me for
9 injunction today or you come back on Monday after
10 they've done what they intend to do and ask for a --
11 file a Motion for Contempt. Those are your two
12 options.

13 MR. NOELTNER: Thank you, Judge.

14 THE COURT: We're gonna take an hour break.

15 (A lunch recess was taken.)

16 THE COURT: Ready to call witnesses?

17 MR. NOELTNER: Judge, we are not calling
18 witnesses. We are going to stand on our pleadings and
19 our argument as it relates to the Motion of Relief.

20 THE COURT: You want say anything?

21 MR. SOLVERUD: Your Honor, I think our
22 response addresses it. But I think this is a TRO.
23 It's seeking injunctive relief. It hasn't met any of
24 the requirements. I think procedurally there's no way

1 you can rule on what he's presented to the Court. I
2 think we lay that out --

3 THE COURT: Well, you said enough. I agree
4 it's the moving party's burden. Motion is denied. I
5 will not take up any of the other matters. And I
6 don't know where the case will go as far as the other
7 judge or not. Okay.

8 MR. NOELTNER: Judge, would you like the
9 parties to confer drafting these orders for today to
10 send it to --

11 THE COURT: Well, write in one sentence,
12 "motion denied".

13 MR. SANDERS: Motions denied?

14 THE COURT: Well, motion for -- let's
15 define the motion, which is motion for -- I got so
16 many motions up here. Emergency motion -- which one
17 is it?

18 MS. POWERS: Emergency motion to enforce
19 the October 20, 2015 amended TRO and restrain and bar
20 the special meeting on January 28, 2017.

21 THE COURT: That's a mouthful.

22 MR. SANDERS: As well as the one we took up
23 first, Your Honor.

24 THE COURT: Well, we can raise that